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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,569	01/21/2004	John H. King	BU129/0BU34	3439
24350	7590	09/19/2005	EXAMINER	
STITES & HARBISON, PLLC 400 W MARKET ST SUITE 1800 LOUISVILLE, KY 40202-3352			DOSTER GREENE, DINNATIA JO	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/761,569

Applicant(s)

KING, JOHN H.

Examiner

Dinnatia Doster-Greene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: Detail Action.

### DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Green (U.S. Patent No. 5,402,535). Luppi discloses a respirator hood including a transparent lens and comprising an inflatable neck cuff (21) positioned near a lower portion of the hood and substantially circumscribing an opening through which the wearer inserts his head (Fig. 2). The inflatable neck cuff is supplied by an air source (column 4) so as to exert a sealing pressure against the neck of the wearer and to prevent the hood from rising up relative to the head of the wearer.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 4, 6, 8, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luppi (U.S. Patent No. 6,792,623) in view of James (U.S. Patent No. 5,283,914). Luppi discloses a respirator hood comprising an inflatable neck cuff (44) positioned near a lower portion of the hood and substantially circumscribing an opening through which the wearer inserts his head (Fig. 6). The inflatable neck cuff is supplied by an air source (41) so as to exert a sealing pressure against the neck of the wearer and to prevent the hood from rising up relative to the head of the wearer. Luppi also discloses an overhead channel (8) which defines an air delivery path from an air source. Luppi further discloses an integral exhalation valve (30).

However, Luppi fails to disclose a lens and multiple overhead channels. Nevertheless, James, which also relates to a respirator hood, discloses that it is known to include multiple overhead channels which are directed towards the lens of the respirator hood. Thus, it would have been obvious skilled in the art to modify the respirator hood of Luppi, to include a lens and multiple overhead air channels (James, Fig. 2) as taught by James for the purpose of providing means for introducing a filtered air supply between the wearer's face and the lens of a visor (James, col. 1).

Claims 3, 5, 7, 9, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luppi and James as applied above, and further in view of Grizard (French Patent No. 2,614,538). The combination of Luppi and James discloses the claimed invention as discussed above with the exception of the air source distributing air to the inflatable neck cuff and one or more overhead channels and a pull-away

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exhalation valve. However, Grizard, which also relates to a respirator hood, discloses that it is known to utilize an input air source to simultaneously provide air to inflate a neck support and to provide air as an input source to the user (Grizard, Figs. 5-6). Grizard further discloses a pull-away exhalation valve (17). Thus, it would have been obvious to one skilled in the art based upon the teaching of Grizard to modify the hood respirator of Luppi to utilize a single air source to inflate the neck support and to provide air to the overhead channels for the purpose of providing a more compact and efficient device.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinnatia Doster-Greene whose telephone number is 571-272-7143. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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